IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.552 OF 2006

Shri J. Rajgopal ..... Petitioner.

V/s

M/s. Software Technology
Parks of India and Ors. ..... Respondents.

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Mr. N.G. Chhatre for the Petitioner.

Mr. Y.M. Nakhwa, APP for the State.

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CORAM: V.M. KANADE, J.
DATE : 10th August, 2007

P.C.:

1. Heard the learned Counsel appearing on behalf of the Petitioner and the learned APP for the State.

2. The Petitioner is challenging the order passed by the Trial Court whereby the process was issued on the complaint being filed by the Respondent No.1 herein under section 138 of the Negotiable Instruments Act. The Petitioner filed a revision application in the Sessions Court. The Sessions Court dismissed the said revision application.

3. It is the case of the Petitioner that the cheque in question was issued on 30/03/2002 on which date he had

already resigned and was no longer Director of the Company. It is his case that he had resigned on 22/01/2002. In support of the said submission, the learned Counsel appearing on behalf of the Petitioner has relied on the certified copy of Form No.32 issued by the Registrar of Companies which indicates that the Petitioner had resigned on the said date. It is submitted that, therefore, in view of this conclusive proof, the Petitioner could not have been prosecuted and the process which has been issued is liable to be quashed.

4. It is not possible to accept the said submission. In para 5 of the complaint, it has been stated as under:-

> "5. The Complainant further states that the Accused No.2 to Accused No.7 on behalf of Accused No.1 issued a cheque of Rs. 1,00,000/- (One lac only) cheque bearing no.978207 dated the 30.03.2002 drawn on Janata Sahakari Bank Ltd. Pune Fort branch, Mumbai."

There is no averment in the Petition that the Petitioner had

not signed the cheque. In the absence of statement on oath made by the Petitioner and in view of the specific averment made by the complainant in their complaint that the cheque was issued by the Petitioner alongwith the other accused, this issue will have to be resolved only after evidence is led by both the parties. It is only in cases where there is no dispute regarding resignation of the accused that the process issued against the resigned Director can be quashed by the Court. However, since there is a dispute regarding the resignation of the Petitioner as a Director on the date on which the cheque was issued, in my view, the Sessions Court was justified in rejecting the revision application. No case is, therefore, made out for interfering with the impugned order.

4. It is, however, clarified that if an application for exemption is filed by the Petitioner, the same may be considered favourably by the Trial Court and only if the presence of the Petitioner is necessary for the purpose of recording his plea or his statement under section 313 of Cr.P.C. his presence may be insisted upon by the Trial Court. The Trial Court shall consider the case on merits and in

accordance with law and also decide the case as expeditiously as possible.

5. With the above directions, Writ Petition is dismissed.

(V.M. KANADE, J.)